

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36186

TEXAS RAILWAY EXCHANGE LLC—CONSTRUCTION AND OPERATION  
EXEMPTION—GALVESTON COUNTY, TEX.

Decided: December 11, 2018

On November 21, 2018, Texas Railway Exchange LLC (TREX) filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a proposed common carrier rail line in Galveston, Tex. (the Line). According to TREX, the proposed Line would consist of approximately one-half mile of rail line and would provide the Texas International Terminals Ltd. (TIT) with a permanent, direct, and more efficient connection to the BNSF Railway Company (BNSF) to better serve the business needs of TIT, BNSF, third party shippers, and the public. TREX states that TIT's customers currently rely on reciprocal switching service from the Union Pacific Railroad Company (UP) for BNSF trains to access TIT. Under the Board's regulations, replies to the petition are due on December 11, 2018. See 49 C.F.R. § 1104.13(a).

On December 5, 2018, UP filed a motion for extension of time to reply to TREX's petition. Specifically, UP requests that the Board extend its time to reply until 20 days after TREX completes its responses to UP's discovery requests served on December 4, 2018. UP states that it has requested discovery responses by December 19, 2018. UP argues that discovery is necessary before replying to TREX's petition, given that the proposed construction project involves crossing UP's tracks and property. UP further argues that its extension request will not unduly delay this proceeding, as the environmental review process is still ongoing, and the manufacturing of a key component of the proposed project would take nearly a year to complete. UP asks that, in the event the Board addresses TREX's petition without allowing time for discovery, the Board make clear that it is not precluding discovery or prejudging issues potentially affected by information UP obtains in discovery.<sup>1</sup>

On December 7, 2018, TREX filed in opposition to UP's motion for extension of time. TREX argues that UP's request for extension of time is improper and in contravention of the Board's rules designed to expedite exemption proceedings. TREX states that it would only be

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<sup>1</sup> UP also asks that the Board refrain from issuing a certificate of public convenience and necessity until TREX finalizes the route for its proposed track and shows that it is entitled to cross affected tracks and operate over other affected property owned by UP. This request is premature and therefore will not be addressed in this decision.

amenable to a seven-day extension for UP's reply (i.e., until December 18, 2018). TREX also states that it intends to respond to UP's discovery requests and provide UP with relevant, responsive information.

The Board will grant UP's motion for extension of time, so that UP can reply to TREX's petition informed by the information obtained through discovery. TREX has indicated that it will be responsive to UP's discovery requests, which are due by December 19, 2018. Upon completion of the discovery served by UP on December 4, TREX shall promptly file notice of that completion with the Board. Replies to TREX's petition will be due 20 days after the date that notification is filed (subject to the rule at 49 C.F.R. § 1104.7(a) pertaining to computation of time).

It is ordered:

1. UP's motion for extension of time is granted.
2. Upon completion of the discovery served by UP on December 4, TREX shall promptly file notice of that completion with the Board.
3. Replies to TREX's petition shall be due 20 days after the notification described in ordering paragraph 2 is filed (subject to the rule at 49 C.F.R. § 1104.7(a) pertaining to computation of time).
4. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.